UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
CIVIL MINUTES

Case Title : Keith C Hayes and Sharon Louise Randall−Hayes

Case No : **11−24798 − E − 13L**

Date : 5/10/11

Time : 01:30

Matter : [16] − Motion/Application to Value Collateral of GMAC Mortgage, LLC [JTN−1] Filed by Debtor Keith C Hayes, Joint Debtor Sharon Louise Randall−Hayes (jtis)

Judge : Ronald H. Sargis
Courtroom Deputy : Janet Larson
Reporter : NOT RECORDED
Department : E

APPEARANCES for :
Movant(s) :
None
Respondent(s) :
None

MOTION was :
Granted
See Findings of fact and conclusions of law below

The court will issue a minute order.

Local Rule 9014−1(f)(1) Motion No Opposition Filed.

Proper Notice Provided. The Proof of Service filed on March 28, 2011, states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee. By the courts calculation, 43 days notice was provided.

The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014−1(f)(1). The failure of the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014−1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Trustee and the respondent creditor are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties pleadings.

The Motion to Value Collateral is granted and creditors secured claim is determined to be $0.00. No appearance required.

The motion is accompanied by the Debtors declaration. The Debtor is the owner of the subject real property commonly known as 7212 Saltgrass Way, Elk Grove, California. The Debtor seeks to value the property at a fair market value of $180,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $279,137.00. GMAC Mortgage, LLCs second deed of trust secures a loan with a balance of approximately $19,869.00. Therefore, the respondent creditors claim secured by a junior deed of trust is completely under−collateralized. The creditors secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer), 313 F.3d 1220 (9th Cir. 2002); Lam v. Investors Thrift (In re Lam), 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.